

This indenture, made this 22nd of September, 1827, between Elizabeth Clagett, Edmund Clagett, Samuel A. Clagett, Richard

bailiwick, and being informed of defendant's residence out of his bailiwick, failed to make the return of *non est* as he had promised to do. The bill admitted the defendant's indebtedness for a part of the amount for which the judgment was recovered, but did not state how much nor offer to pay it. *Held*, that these allegations were not sufficient to warrant the granting of an injunction. *Gardner v. Jenkins*, 14 Md. 58. Where an attachment process has been in fact served on a party, he cannot ask equity to restrain execution of the judgment of condemnation on the ground of surprise in obtaining it. *Peters v. League*, 13 Md. 58. Equity cannot restrain execution of a judgment of condemnation upon the ground that the garnishee was *privileged* from service of the attachment, because of his being a member of one of the Councils of Baltimore City, and in the actual discharge of his duties as such, at the time the writ was served on him. *Ibid.* Service of process upon a privileged person or in a privileged place is not void, but a mere irregularity, which may be waived by a trial or confession of judgment; the privilege must be claimed by a plea or motion in the particular case, made at the proper time. *Ibid.* Judgments of condemnation in attachments upon judgments of a Justice of the Peace will not be enjoined upon the ground that the attachments were improperly issued, because that defence should have been made, upon the return of the attachments, before the justice. *Windwart v. Allen*, 13 Md. 196.

Equity will relieve against a judgment on a bond given for a gambling consideration, although no such defence was made in the suit at law, and although the judgment was recovered by a *bona fide* assignee for value and without notice. *Gough v. Pratt*, 9 Md. 526. Cf. *Hook v. Boteler*, 3 H. & McH. 348, *note*. As to when equity will relieve against a judgment on the ground of usury in the contract on which it was founded, see *Hill v. Reifsnider*, 39 Md. 429; *Neurath v. Hecht*, 62 Md. 221, and cases *supra*, sec. V.

Where an attorney agreed that a judgment should not be enforced except upon certain terms, the premature enforcement thereof will be restrained. *Kent v. Ricards*, 3 Md. Ch. 393. Where there is an agreement to allow for payments, and a verdict has been taken by mistake or surprise, equity will interfere. *Chase v. Manhardt*, 1 Bland, 333. But when an injunction is granted on the ground that the defendant at law is entitled to a credit for a sum less than the whole amount of the judgment, it ought to be with a proviso that the plaintiff at law may proceed to collect the balance of the judgment. *Hodges v. Planters Bank*, 7 G. & J. 307.

To warrant Chancery in entering a judgment, obtained on a bond given for the whole purchase money of land sold to the complainant, satisfied, or perpetually enjoining the same, it must vacate the sale upon which the bond was given. *Buchanan v. Torrance*, 11 G. & J. 342. Cf. *Gale v. Fattle*, 14 Md. 69; *Buchanan v. Lorman*, 3 Gill, 51. A partition made by the County Court is a nullity if a division of the lands had been before made by the parties themselves, and the enforcement of such partition will be restrained. *Hardy v. Summers*, 10 G. & J. 316.

Judgment was rendered in an action on a single bill which had been given for the repayment of money loaned by the plaintiff to the defendant. Part of the money loaned was a post-note of the Bank of the United States which had been stolen and put into circulation by a forged endorsement. The defendant, not having been able to make his defence of a failure of consideration in the action on the single bill, was held to be entitled to an injunction